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EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW

| Case Law Bulletin

Week of April 17, 2017

Eighth Circuit

[Lemus-Arita v. Sessions](#), No. 16-1924, 2017 WL 1371418 (8th Cir. Apr. 17, 2017) (Asylum, PP/WFF)

The Eighth Circuit denied the PFR, concluding that the Board did not err in denying the alien's applications for asylum, WR, and CAT. The Court noted that the alien did not establish PP because he was never harmed and never threatened directly, receiving only secondhand warnings. The court further noted that the alien "could not point to anything more than rumors to substantiate the identity of the group threatening him" and while the alien "emphasizes the threats against his sister, . . . these threats did not result in physical harm to her, and she did not immediately flee Guatemala like her brother." Similarly, the alien did not demonstrate his WFF is objectively reasonable because he "was never harmed or personally threatened and never observed anyone he thought would attempt to threaten or harm him. The threats his sister related amounted to little more than rumors that did not identify the source of the threats."

[Maric v. Sessions](#), No. 15-3835, 2017 WL 1379197 (8th Cir. Apr. 18, 2017) (237(a)(1)(H) waiver; BOP: 8 C.F.R. § 1240.8(d))

The Eighth Circuit denied the alien's PFR, concluding that the alien was removable under section 212(a)(6)(C)(i) of the Act for willful misrepresentation and ineligible for a section 237(a)(1)(H) waiver. The court noted that DHS presented evidence that "indicates [the alien] may have participated in the extrajudicial killings . . . [which] placed on [the alien] the burden to prove by a preponderance of the evidence that the statutory bar" found in section 212(a)(3)(E)(iii) did not apply. Contrary to the alien's arguments, the court noted that

the burden shift was appropriate because it is the alien's burden to prove eligibility for relief. See 8 C.F.R. § 1240.8(d).

#### Ninth Circuit

[Minto v. Sessions](#), No. 12-74027, 2017 WL 1371420 (9th Cir. Apr. 17, 2017) (Section 212(a)(7)(A)(i)(I))

The Ninth Circuit denied the alien's PFR, holding that the IJ and Board correctly concluded that the alien is inadmissible under 212(a)(7)(A)(i)(I) of the Act. The panel also held that the alien is deemed by law to have made a continuing application for admission because he was in the Commonwealth of the Northern Mariana Islands without admission or parole on November 28, 2009, the date United States immigration laws became applicable to the CNMI.

#### Eleventh Circuit

[United States v. Cook](#), No. 16-11577, 2017 WL 1404682 (11th Cir. Apr. 20, 2017) (unpublished) (18 U.S.C. § 924(e)(2)(B)(i) (ACCA "Violent Felony"))

The Eleventh Circuit upheld the district court's sentence, concluding that the defendant's felony obstruction of justice convictions under Ga. Code Ann. § 16-10-24(b), are violent felonies under the ACCA because they are crimes "punishable by imprisonment for a term exceeding one year" that have "as an element the use, attempted use, or threatened use of physical force against the person of another."